

# SEACREST & KALKOWSKI, P.C.

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May 3, 2004

## HAND DELIVERY

Joan Ross, City Clerk  
County City Building  
555 South 10<sup>th</sup> Street  
Lincoln NE 68508

FILED  
CITY CLERK'S OFFICE  
MAY 3 PM 11 28  
CITY OF LINCOLN  
NEBRASKA

RE: Flood Plain Management Ordinances and Resolutions in the New Growth Areas  
(Agenda Items #25 through #40 inclusively; 04-72 through 04-82 inclusively and  
04R-87 through 04R-91 inclusively)

Dear Joan:

On behalf of Ridge Development Company and Southview, Inc., we are requesting that the City Council public hearing on the above referenced matters scheduled for May 3, 2004 be continued until May 10, 2004. I, along with other Lincoln citizens, will be in Washington D.C. to discuss City of Lincoln, University of Nebraska, Lincoln Public Schools, and other important community matters on May 3<sup>rd</sup>. My office has heard directly or from others that there are at least four council members willing to continue the May 3<sup>rd</sup> public hearing for one week. Based upon that information, I have elected to go to Washington D.C.

Our office has advised Nicole Fleck-Tooze and others that we will be submitting formal amendments to the above referenced matters. For everyone's information, we are enclosing a summary outline of our proposed amendments. This will allow the City Council and others to have advance notice and an outline of what our office is intending to propose. Please note that **our clients are supportive of over 95% of the major principals** drafted in the above referenced ordinances and resolutions, including the "No Net Rise" standard and requirement for "Compensatory Storage".

Our clients' difficulties with the remaining 5% of the ordinances and resolutions arise from how the above referenced matters apply the Minimum Flood Corridor to the "top of the hill" watershed areas. Our clients believe the existing City and Federal floodplain management requirements properly address the flooding risk associated with the top of the hill watershed areas (e.g., U.S. Army Corps of Engineer 404 Permit Process, City's storm water detention standards and the City's requirement that the 2, 5, 10 and 100 year flood waters be properly routed through

subdivisions). If the City wants to improve water quality, wildlife or other environmental goals with the Minimum Flood Corridor, then there are better ways to address those goals than the proposed regulations that would require the preservation of many highly erosive ephemeral waterways that lack riparian vegetation and wildlife diversity.

In many instances, the proposed regulations include the same requirements as the U.S. Army Corps of Engineer 404 Permit Process and yet create a whole new City administrative process that unnecessarily duplicates the Army Corps of Engineer process at a very expensive cost to the City taxpayers. In other aspects, the proposed flood management regulations when applied to the "top of the hill" will be too costly, inflexible, unbalanced and will not be the best mechanism to achieve better water quality and diverse riparian corridors.

Again our proposed amendments are intended to better balance the remaining 5% of the major principals drafted in the above referenced ordinances and resolutions so that a 100% package is approved. Our office will use its best efforts to submit formal amendments to the above referenced matters by the end of the day on Thursday (May 6<sup>th</sup>). In the event City Staff or others want to meet with our office to discuss the enclosed outline summary, then our formal amendments may be not be ready until next Monday (May 10<sup>th</sup>).

We thank the City Council for its consideration of our requested continuation of the public hearing until May 10<sup>th</sup>. Please call DaNay Kalkowski (435-6000) or me (432-9600 cellular) if you have questions or comments. Thank you for your consideration of our request.

Yours Very Truly,



Kent Seacrest  
For the Firm

Enclosure: Summary Outline of Proposed Amendments

cc (with enclosures):

Via Hand Delivery

Mayor Seng

City Council Members

Nicole Fleck-Tooze

Glenn Johnson

Mike DeKalb

Rick Peo

Via U.S. Mail

Ridge Development Company

Southview, Inc.

FILED  
CITY CLERK'S OFFICE  
**MINIMUM FLOOD CORRIDOR – NEW GROWTH AREA**  
May 2, 2004 '04 MAY 3 PM 11 30

**Introduction:**

CITY OF LINCOLN  
NEBRASKA

The following text without marked changes is an outline summary of the proposed Minimum Flood Corridor in the Flood Plain Management Ordinances and Resolutions in the New Growth Areas. The marked changes reflect our law firm's proposed amendments that will be formally proposed to the City Council by May 10, 2004. Please note there are two alternatives for Sections 3 and 4 below.

**1. Preservation of Minimum Flood Corridor required along any channel which:**

1. drains greater than 150 acres; or
2. has a defined bed and bank (but excludes upland erosional features)

**2. Required City Minimum Flood Corridor Buffer (Width):**

drains over 150 acres	-	channel bottom	+	<b>60 feet</b>	+	(6 x channel depth)
drains 101 – 150 acres	-	channel bottom	+	<b>40 <u>25</u> feet</b>	+	(6 x channel depth)
drains <u>51-75</u> – 100 acres	-	channel bottom	+	<b>20 <u>25</u> feet</b>	+	(6 x channel depth)
drains 26 – 50 acres	-	channel bottom	+	<b>10 feet</b>	+	(6 x channel depth)
drains 0 – <u>25-75</u> acres	-	no minimum flood corridor				

**Alternative 1 for Sections 3 and 4:**

**3. Alternative 1: Fill and Vegetation Encroachments in the Minimum Flood Corridor of High Function Riparian Creek Corridors:**

• **Criteria used to determine a High Function riparian creek corridor:**

1. habitat for endangered species
2. existing stable creek slopes
3. perennial stream
4. significant tree massing
5. significant vegetation diversity

• **Individual areas of encroachment permitted:**

1. operation, maintenance and repair
2. channel improvements
3. stormwater storage facility
4. utility crossings
5. parks
6. pedestrian/bike trails
7. recreational uses
8. stream crossing structures

9. educational and public service facilities (excluding buildings)
810. public purposes

Note: For 5, 6 and 7 uses: ~~where encroachments are minimal and generally consistent~~ with the purpose of the corridor.

- **Prior to vegetative encroachment or fill for permitted purposes of a High Function riparian corridor you must submit documentation to the City for review showing the steps taken using the sequencing approach, and the selected alternative.**

1. Avoidance. Encroachment of riparian vegetation and the existing grade should be avoided if there is a practicable alternative that does not cause encroachment.
2. Minimization. If it is determined that avoidance is not practicable then steps must be taken to minimize impacts to the riparian vegetation and/or the existing grade.
3. Mitigation. Impacts to the riparian vegetation or to the existing grade must be mitigated after an appropriate and feasible alternative has been chosen through minimization.

- **Mitigation:** For loss of riparian vegetation and fill in impacted areas shall occur at a 1.5 to 1 ratio. *Where land uses prior to development have an impact on the buffer, the area should be replanted with vegetation compatible with the minimum flood corridor and water quality benefits.*

4. **Alternative 1: Fill and Vegetation Encroachments in Minimum Flood Corridor of Low Function Riparian Creek Corridors:**

- **Criteria used to determine a Low Function riparian creek corridor:**

1. steep vertical banks with exposed soils
2. nonnative vegetation
3. ephemeral stream
4. lack of vegetation diversity

- **Individual areas of encroachment or relocation of Low Function riparian corridors is permitted. Prior to vegetative encroachment or fill of a Low Function riparian corridor for permitted purposes you must submit documentation to the City for review showing the steps taken to improve the existing corridor or selected alternative corridor.**

1. Channel Improvement. The channel improvement must be based upon the City's Drainage Criteria Manual, which is based upon current best management practices.
2. Mitigation. Loss of riparian vegetation and fill in impacted areas shall be mitigated at a 1.5 to 1 ratio.
3. Native Riparian Vegetation. The replacement plant material for loss of riparian vegetation must be native.

\* **Exception:**

Stream Crossing Structures within a floodplain or floodprone area are not required to mitigate for lost storage if they meet the conditions for sequencing and mitigation provided

in 10.4. Required to revegetate graded areas adjacent to the Stream Crossing with plant material compatible with the existing native riparian area.

**Alternative 2 for Sections 3 and 4:**

**3. Alternative 2: Fill Encroachments in Minimum Flood Corridor and Waters of the United States of America:**

- **Prior to fill of a Waters of the United States you must submit 404 permit documentation to the U.S. Army Corp of Engineers for approval showing the steps taken using the sequencing approach and the selected alternative.**
  1. Avoidance.
  2. Minimization.
  3. Mitigation. (Plus any required 404 permit buffer or the Required City Minimum Flood Corridor Buffer shown above, whichever buffer is greater).

**4. Alternative 2: Vegetation Only Encroachments (No Fill) in Minimum Flood Corridor:**

- **Individual Areas of Vegetation Only Encroachment Permitted:**
  1. operation, maintenance and repair
  2. channel improvements
  3. stormwater storage facility
  4. utility crossings
  5. parks
  6. pedestrian/bike trails
  7. recreational uses
  8. stream crossing structures
  9. educational facilities (excluding buildings)
  10. public purposes

5, 6 and 7 uses: where encroachments are minimal and generally consistent with the purpose of the corridor
- **Prior to vegetation only encroachments ~~or fill~~ for permitted purposes you must submit documentation to the City for review showing the steps taken using the sequencing approach, and the selected alternative.**
  1. Avoidance. Encroachment of riparian vegetation and the existing grade should be avoided if there is a practicable alternative that does not cause encroachment.
  2. Minimization. If it is determined that avoidance is not practicable then steps must be taken to minimize impacts to the riparian vegetation and/or the existing grade.
  3. Mitigation. Impacts to the riparian vegetation or to the existing grade must be mitigated after an appropriate and feasible alternative has been chosen through minimization.
- **Mitigation:** For loss of riparian vegetation ~~and fill~~ in impacted areas shall occur at a 1.5 to 1 ratio. *Where land uses prior to development have an impact on the buffer, the area should be replanted with vegetation compatible with the minimum flood corridor and water quality benefits.*

\* **Exception:**

Stream Crossing Structures within a floodplain or floodprone area are not required to mitigate for lost storage if they meet the conditions for sequencing and mitigation provided in 10.4. Required to revegetate graded areas adjacent to the Stream Crossing with plant material compatible with the existing riparian area.